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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,432	08/01/2001	John M. Cuckler	10557/247605	6380
30559 7590 03/28/2008 CHIEF PATENT COUNSEL SMITH & NEPHEW, INC. 1450 BROOKS ROAD MEMPHIS, TN 38116				
EXAMINER				
WILLSE, DAVID H				
ART UNIT		PAPER NUMBER		
3738				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/920,432

**Applicant(s)**

CUCKLER ET AL.

**Examiner**

Dave Willse

**Art Unit**

3738

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63 and 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63 and 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-8, 10-12, 14-22, 56, 57, 59, 61, 63, and 66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 18, “the *plastic* liner” (emphasis added) lacks a proper antecedent basis. Claims 7 and 12 do not appear to further limit claim 1 (at lines 15-18) or are confusing as to the scope. In claim 14, line 6, “the cup member” lacks a proper antecedent basis. In claim 56, lines 9-10, “superior flange” being listed twice renders the claim indefinite and confusing. In claim 66, line 11, “the securing member surface” lacks a proper antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14, 17-23, and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Setiey et al., FR 2 660 546 A1. Figure 3 illustrates a cup body **2** having an apex, a rim **26** extending about the periphery, curved flange portions **9** and **10**, and an anti-luxation lip **39** defining a portion of a concave surface extending distally to a greater extent adjacent the flange portions **9** and **10** (English translation: page 6, last paragraph). Regarding claims 19, 20, and others, attention is directed to the holes **24** and **28** (Figure 1; English translation: page 6, lines 18-20).

Claims 24, 26-31, 33-36, 38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Setiey et al., FR 2 660 596 A1. Regarding claim 24, the rim **26** can be viewed as being part of the cup wall; the rim **26** having a thickness of about 2 mm would have been obvious in order to better conform to the existing iliac geometry while retaining sufficient mechanical strength. Regarding claim 26 and others, annular bosses were well known in the art at the time of the present invention and would have been obvious in order to reinforce the openings through which the fastening screws pass. Regarding claim 31, at least one pair of holes **24** and **28** being in the form of a slot would have been obvious in order to provide selective positioning of the screw(s) into viable bone. Regarding claim 35, the inferior flange **8** having more than one opening **20** would have been obvious in order to enhance the anchorage and/or in order to accommodate a thinning or absence of bony support (English translation: page 2, lines 10-13) by directing the screw into another bone region. Regarding claim 47, the anti-luxation lip **39** is *capable* of partially containing bone cement against surrounding bone, whether or not such was the intent. In the case of claim 56, the “containment

lip" (claim 56, line 13) corresponds to the annular lip **26** of Setiey et al., with the "liner" (claim 56, line 17) being the insert **5** of Setiey et al.

Claims 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rambert et al., FR 2 578 162 A1: Derwent abstract; figures. The drawings illustrate superior and posterior flanges **3** and an inferior flange **18**. To incorporate more than one opening into each of said flanges would have been obvious to the ordinary practitioner in order to provide more options to the surgeon for affixing the prosthesis to "firmer bone" (Derwent title). Likewise, a plurality of openings in the cup **2** would have been an obvious variant on or supplement to the elements **23**, **24**, and **24a** depicted in Figure 6 so as to enable the anchoring of bone screws into more viable bone for a particular patient. Annular reinforcement of such openings was well known in the art and would have been obvious in order to counter stress concentrations imposed on the openings. Although not shown, a relatively thick liner (also quite common in the art) would have been immediately obvious, if not inherent, in order to provide an appropriate material for articulation with the femoral ball or head. A cement mantle for affixing the liner to the cup **2** would have been obvious to one of ordinary skill in order to adhere the liner to the smooth inner surface of the cup so as to provide for an even distribution of stress across the bearing interfaces of the acetabular components. Regarding claim 8 and others, attention is directed to the throat or slot **6**. Regarding claims 15, 16, and others, the flange or flanges **3** extend around the cup body a measure of about 45 degrees in the circumferential direction defined by the cross-sectional view of Figure 6; the flange portion can alternatively be equated with one of the protrusions forming the throat **6** (Figures 1 and 2).

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Attention is directed to MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday, Tuesday, and Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/Dave Willse/  
Primary Examiner  
Art Unit 3738**